IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 334 of 2001

in

SPECIAL CIVIL APPLICATION No 1120 of 2001
with
Civil Application No.4352 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE FINANCIAL CORPORATION

Versus

SUO MOTU FOR SMT. ASHABEN J. DAVE

Appearance:

Mr.N.D. Nanavati, Senior Advocate, with
MR RD DAVE for the Appellant.

MR BD KARIA for Respondent No. 1

Mr.V.M. Pancholi, AGP, for respondent No.2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/04/2001

ORAL JUDGEMENT

1. Appeal is admitted. Mr.Karia, learned Advocate, and Mr.V.M. Pancholi, learned AGP, appear and waive service of notice of admission on behalf of respondent Nos. 1 and 2, respectively.

With the consent of parties, the appeal is taken up for final hearing today.

2. This appeal is directed against the order of the learned single Judge dated 23rd March, 2001, passed in Special Civil Application No.1120 of 2001. The learned single Judge, taking cognisance of a letter addressed by respondent No.1 to the learned single Judge and handed over to the Private Secretary of the learned Judge, entertained the aforesaid petition as suo motu proceedings and disposed of the same by giving various directions to the present appellant.

3. The respondent No.1 herein addressed a letter to the learned Judge, wherein she has pointed out that even though she has retired, she has been given only 60% of her gratuity amount, instead of 100%, without assigning any valid reasons. She has also further stated in her application that 60% of leave encashment salary has also not been paid to her. She, therefore, requested that her legitimate dues of Rs.1,75,306/- may be paid to her by directing the appellant to make the said payment forthwith. In her letter, it is further stated by her that her letter may be treated as a suo motu writ petition.

4. The learned single Judge, by his order dated 7.2.2001, came to the conclusion that, prima facie, there is no justification on the part of the Corporation to withhold the aforesaid amount and the learned Judge thereafter decided to treat the aforesaid letter as suo motu petition. The Office was directed to register the same as a Special Civil Application.

5. On the basis of the aforesaid order dated

7.2.2001, the office gave number to the letter and it was treated as a writ petition, being Special Civil Application No.1120 of 2001. Therafter, necessary notices were issued to the present appellant as well as the State Government. After hearing the Advocates for the present appellant as well as the Advocate for the State Government, the learned single Judge disposed of the Special Civil Application by the order dated 23rd March, 2001. The learned single Judge came to the conclusion that there was no justification on the part of the appellant to withhold the aforesaid amount. It was, therefore, directed that the amount of Rs.1,75,306/should be paid to respondent No.1 herein, with interest at the rate of 18% per annum from the date of her retirement till such payment is made in her favour. The learned single Judge also further held that this amount, which is required to be paid to respondent No.1, be recovered from the members of the Board of Directors as well as from the Officers of the Corporation, who were found to be responsible for not releasing the aforesaid benefit in favour of the respondent No.1. The aforesaid order of the learned single Judge is impugned at the instance of the appellant herein, the original respondent No.2 before the learned single Judge.

6. Mr.N.D. Nanavati, learned Senior Advocate, appearing on behalf of the appellant, submitted that the order of the learned single Judge is bad in law because the learned single Judge should not have entertained the Special Civil Application on the basis of a letter addressed by respondent No.1 directly to the Court. He submitted that if any such letter is received by the concerned Judge, ultimately, the same was required to be placed before the learned Chief Justice and, therafter only appropriate proceedings, as deemed fit, could have been entertained. Mr.Nanavati further submitted that no notice could have been taken of such a letter, which is directly addressed to the concerned Judge. Mr.Nanavati further submitted that, in any case, at the relevant time, as per the Roster notified for the period from 8.1.2001 to 11.3.2001, the learned Judge was assigned the following subjects :-

" ... ...

1. Detention and Externment matters
for Admission and Final Hearing.

2. Parole, Furlough and Jail Matters
for Admission and Final Hearing.

3. Criminal Matters (other than matters U/s.482 of Cr.P.C.) for Admission and Final hearing.

4. Misc. Criminal matters for Admission and Final Hearing.

... ... "

He, therefore, submitted that, in any case, the aforesaid subject was not assigned to the learned Judge as the said subject falls within the category of "Service Matter". In his submission, therefore, the learned single Judge should have sent the matter to the learned Chief Justice for placing it before the appropriate court taking up service matters in case it was decided to take cognisance of such letter by treating such letter as a suo motu Special Civil Application.

7. On the merits of the case, Mr.Nanavati submitted that since the revision of pay scale was subject to approval of the State Government, and since the State Government had not given the approval, the appellant-Corporation was not in a position to release the entire benefit in favour of such employees as such benefits are required to be given only after approval of the revised pay scales is given by the State Government and the matter was at large before the State Government as to whether such approval was required to be given or not. In his submission, therefore, the action of the appellant-Corporation was not arbitrary, or illegal in any manner and because of the aforesaid circumstances, entire 100% gratuity and leave encashment benefits were not given in favour of respondent No.1 as well as in favour of such other employees. He also submitted that it is not a case where any discriminatory treatment was meted out by the appellant-Corporation to respondent No.1.

8. Mr.Karia, on the other hand, submitted that in any case, if this Court comes to the conclusion that the matter was required to be decided by the concerned Judge taking service matters, then the present proceedings may be sent back to the learned Judge taking up such proceedings as per the Roster. He submitted that the learned single Judge has not treated the aforesaid proceedings as "Public Interest Litigation", but he has exercised suo motu power in order to see that respondent No.1 may get her legitimate dues at the earliest. The

question which is required to be considered by this court is whether any cognisance was required to be taken on the basis of such letter of respondent No.1 by the learned single Judge.

9. In this connection, Mr.Nanavati has relied upon the decision of the Supreme Court in Bandhua Mukti Morcha v. Union of India and others, AIR 1984 SC 802. He has relied upon the observations made by the Apex Court in paragraph 54 of the said judgment. We reproduce the same as under :-

> " ... ...
>
> A practice has grown in the public of invoking the jurisdiction of Supreme Court by a simple letter complaining of a legal injury to the author or to some other person or group of persons, and the Court has treated such letter as a petition under Article 32 and entertained the proceeding without anything more. It is only comparatively recently that the Court has begun to call for the filing of a regular petition on the letter. Grave danger is inherent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can, without anything more, be attributed to the communication. There is good reason for the insistence on a document being set out in a form, or accompanied by evidence, indicating that the allegations made in it are made with a sense of responsibility by a person who has taken due care and caution to verify those allegations before making them. The Court must be ever vigilant against the abuse of its process. It cannot do that better in this matter than insisting at the earliest stage, and before issuing notice to the respondent, that an appropriate verification of the allegations be supplied. The requirement is imperative in private law litigation. Having regard to its nature and purpose, it is equally attracted to public interest litigation. While this Court has readily acted upon letters and telegrams in the past, there is

need to insist now on an appropriate verification of the petition or other communication before acting on it. There may be exceptional circumstances which may justify a waiver of the rule. All communications and petitions invoking the jurisdiction of the Court must be addressed to the entire Court, that is to say, the Chief Justice and his companion Judges. No such communication or petition can properly be addressed to a particular Judge. When the jurisdiction of the Court is invoked, it is the jurisdiction of the entire Court.

... ... "

He has also relied upon the observations made in the concluding part of paragraph 78 of the said judgment :-

" ... ...

Experience shows that in many cases it may not be possible for the party concerned to file a regular writ petition in conformity with procedure laid down in the Rules of this Court. It further appears that this Court for quite some years now has in many cases proceeded to act on the basis of the letters addressed to it. A long standing practice of the Court in the matter of procedure also acquires sanctity. It may also be pointed out that in various cases the Court has refused to take any notice of letters or other kind of communications addressed to Court and in many cases also the Court on being moved by a letter has directed a formal writ petition to be filed before it has decided to proceed further in the matter. It is, however, eminently desirable, in my opinion, that normally the procedure prescribed in the rules of this Court should be followed while entertaining a petition under Art. 32 of the Constitution, though in exceptional cases and particularly in matter of general public interest, this Court may, taking into consideration the peculiar facts and circumstances of the case, proceed to exercise its jurisdiction under Art. 32 of the Constitution for enforcement of

fundamental rights treating the letter or the communication in any other form as an appropriate proceeding under Art. 32 of the Constitution. It is, however, eminently desirable that any party who addresses a letter or any other communication to this Court seeking intervention of this Court on the basis of the said letter and communication should address this letter or communication to this Court and not to any individual Judge by name. Such communication should be addressed to the Chief Justice of the Court and his companion Justices. A private communication by a party to any learned Judge over any matter is not proper and may create embarrassment for the Court and the Judge concerned.

... ..."

(emphasis supplied)

Mr.Nanavati, therefore, submitted that, in any case, in view of the aforesaid observations of the Supreme Court in the aforesaid paragraph, the learned Judge should not have taken any cognizance on the basis of such letter addressed by a citizen directly to the concerned Judge.

10. Mr.Nanavati also further relied upon the decision of the Supreme Court in State of Rajasthan v. Prakash Chand and others, (1998) 1 SCC 1. In the said decision, the Honourable Supreme Court has observed that it is within the prerogative of the Chief Justice of the High Court in matters of constitution of Benches, providing roster, transfer of cases, including part-heard cases, from the Board of single Judge to a Division Bench for disposal on being satisfied that the case involved constitutional issues, and the Apex Court therafter held as under :-

" ... ...

In the event a single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the advocates of the parties for listing of

case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the Chief Justice and obtain appropriate orders. This is essential for smooth functioning of the High Court.

... ..."

In the said decision, the Honourable Apex Court reached broad Conclusions, of which the salient conclusions are reproduced hereunder :-

" ... ...

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the Benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

... ...

(6) That the puisne Judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

... ... "
(emphasis supplied by us)

11. After considering the facts and circumstances of

the case, as well as considering the case law on the subject, we are of the opinion that even if any letter is addressed to the concerned Judge, instead of straight away taking suo motu cognizance of the same by issuing notices to the other side, it would be proper if such letters are placed before the Chief Justice. In our opinion, it would be necessary, particularly in view of the fact that the matters are required to be decided by the concerned Judge as per the List and as per the subject allotted to the said Judge as per the Roster. Sometimes, it may result into chaos when, even though a particular subject is not assigned to a particular Judge, proceedings are entertained by such Judge only on the basis of such a letter. It would be desirable, therefore, not to take any cognizance on the basis of such letter written directly to the Judge. Nowadays, we find that litigants / citizens are directly addressing letters to the Judges. Therefore, if proceedings are initiated on the basis of such letters, difficult situations may arise. Not only that, if any decision is taken on the basis of such letter, it will upset the Roster notified by assigning a particular type of work to the concerned Judge. Under these circumstances, we are of the opinion that no cognizance was required to be taken by the learned single Judge on the basis of such letter addressed by respondent No.1 directly to the learned single Judge and personally handed over to the Private Secretary to the learned Judge. It is to be noted that the matter was required to be placed before the Chief Justice, and no cognizance worth the name could have been taken on the basis of such letter in view of the pronouncement of the Supreme Court in (1998) 1 SCC 1 (supra), wherein it is held that it is the prerogative of only the Chief Justice to assign work to the concerned Judge as per the Roster. If proceedings are initiated on the basis of such letter by the concerned Judge, naturally, the Roster prepared by the learned Chief Justice will be of no avail. Even on the basis of propriety also, it is not advisable to follow such a course. Under these circumstances, we are of the opinion that initiation of suo motu proceedings by the leanred Judge, who was not assigned service matters on the relevant day, is bad in law. It is hoped that, in future, if any such exigency arises, the concerned Judge, instead of taking suo motu proceedings on the basis of such letter, may send such letter to the Chief Justice or may not take further proceedings on the basis of such letter himself so that the court proceedings may continue in a smooth manner and as per the prescribed Roster.

12. Mr.Karia, however, requested that the aforesaid

proceedings should be placed before a learned single Judge taking service matters. However, we are of the opinion that no proceedings should have been initiated on the basis of such letter, especially when there is no material also, which can be said to be available in the letter, and since we are deciding this appeal mainly on the question of procedure, we are not in a position to accede to the said request of Mr.Karia. However, liberty is given to respondent No.1 to file substantive Special Civil Application giving all required particulars.

It is also required to be noted that the respondent No.1 is a retired employee and it is not her case that she is not in a position to spend for filing substantive Special Civil Application. It would, therefore, be advisable that substantive Special Civil Application be filed by her giving necessary details and facts in her petition. Especially when she has already engaged an Advocate in this Letters Patent Appeal, naturally, she can file a substantive Special Civil Application. Even otherwise, even if there be financial constraints on the part of respondent No.1, it is always open for such litigant to take recourse to the free legal aid made available by the Gujarat State Legal Services Authority, Ahmedabad.

13. Under these circumstances, therefore, the impugned order of the learned Judge, who was admittedly not assigned any service matters on the relevant day, is required to be set aside and it is accordingly set aside. Appeal is accordingly allowed with no order as to costs.

We may, however, clarify that so far as the merit of the case is concerned, we are not expressing any opinion one way or the other since we are of the opinion that no cognizance on the basis of such letter in the facts of the present case was required to be taken. We, however, clarify that it would be open for respondent No.1 herein to initiate appropriate proceedings for redressing her grievances and if any substantive Special Civil Applicaiton is filed for ventilating her grievance, the same is required to be ultimately dealt with in accordance with law. We are setting aside the order of the learned single Judge only on the limited ground, as indicated above.

In view of the above order, no order need be passed in Civil Application No.4351 of 2001.

18th April, 2001 (D.M. Dharmadhikari, C.J.)

(P.B. Majmudar, J.)

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(apj)